

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

FERNANDO CORNIEL-REYES,

Defendant.

02:01-CR-00407-LRH-LRL

ORDER

I. Motion for Certificate of Appealability

This court previously entered an order denying Defendant Reyes's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (#165¹).

Defendant has filed a motion for a certificate of appealability so he may appeal from this court's order denying his motion for § 2255 relief (#167). The Government has not filed an objection to Defendant's present motion.

The court will deny Defendant's motion for a certificate of appealability. The standard for the issuance of a certificate of appealability calls for a "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c). The Supreme Court has interpreted 28 U.S.C. §2253(c) as follows: "Where a district court has rejected the constitutional claims on the merits, the

¹ Refers to the court's docket

1 showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that
2 reasonable jurists would find the district court's assessment of the constitutional claims debatable
3 or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

4 The court finds Defendant is unable to meet this standard with respect to any of the issues
5 for which he seeks a certificate of appealability. Defendant has failed to demonstrate that
6 reasonable jurists would find this court's assessment of his constitutional claims is debatable or
7 wrong. Thus, Defendant has not made a substantial showing of the denial of a constitutional right.
8 Defendant's motion for a certificate of appealability is therefore denied.

9 **II. Motion for Return of Property**

10 Defendant has also filed a motion for return of property, which seeks the return of \$500
11 seized at the time of his arrest (#170). This court previously disposed of an identical request in
12 Defendant's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. This
13 court denied Defendant's motion for return of seized property as moot because the Government
14 indicated that it would instruct for the money to be released upon receipt of the name and address
15 of the designated recipient for the money.

16 In Defendant's current motion, he provides his current address as the designated address for
17 receipt of the money. Because Defendant does not contend the Government has refused this or any
18 previous request for release of the money, Defendant's motion for return of property is denied as
19 moot.

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1 IT IS THEREFORE ORDERED that Defendant's motion for a certificate of appealability
2 (#167) is DENIED.

3 IT IS FURTHER ORDERED that Defendant's motion for return of property (#170) is
4 DENIED as moot.

5 IT IS SO ORDERED.

6 DATED this 14th day of April 2008.

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LARRY R. HICKS
10 UNITED STATES DISTRICT JUDGE
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